IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.202 OF 2002

Mohd.Akram Mohd.Majij Shaikh,
Convict No.C/12034,
Presently lodged at
Yerawada Central Prison,
Pune, Maharashtra. ...Appellant/
(Ori.Accd.No.1)

Versus

The State of Maharashtra ...Respondent
(Ori.Complainant)

.....

Mr.K.M.Sangani for Appellant/original accused No.1.

Mr.K.V.Saste, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 19, 2006.

ORAL JUDGMENT :

1. This Appeal by accused No.1 is against the Judgment and Order passed by the Special Judge (under NDPS Act) for Greater Bombay at Bombay dated March 31, 2001 in N.D.P.S. Special Case No.111 of 2000.

2. In short, the prosecution case is that acting on the prior information, the Officer of

Narcotic Cell, C.B. C.I.D. Mumbai laid a trap at B.E.S.T. bus-stop, Route No.310, Near Dharavi-Bandra Road and Bandra-Kurla Complex Road Junction, Bandra (East), Mumbai at about 14.00 hours on 1st June 2000 and the accused were noticed alighting from Bus No.310 at about 14.45 hours at the said bus-stop. The Appellant/accused No.1 was found carrying a plastic bag with something inside it. After alighting from the bus, the accused waited at the bus-stop and were talking to each other. The accused were surrounded at the spot by the Officers of Narcotic Cell and Panchas. The raiding party was led by Police Inspector Choudhari, who disclosed his identity and intention to search the accused for suspected possession of narcotic drugs. After following necessary procedure, search was taken and it was noticed that the dark blue coloured plastic bag carried by the Appellant contained 42 pieces, almost spherical in shape, of black resinous substance weighing 1.750 kgs. packed in a transparent heat sealed polybag. The substance was weighed and tested at the spot with drug identification kit. The test was positive for charas. Thereafter, small samples

weighing 25 gms were taken from the bulk articles and were duly packed and sealed. Later on, the samples were sent for chemical analysis. The Chemical Analyser's report indicated that the item sent for testing was contraband item. The Appellant along with co-accused was accordingly tried for offence punishable under Section 20(b)(ii) and Section 29 r/w Section 8(c) of the Narcotic Drugs & Pshychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). The Trial Court framed following charges :

> "1. U.D.Salvi, Special Judge, Gr.Bombay, hereby charge you
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> 1.Mohamed Akram Mohamed Majij Shaikh.
> 2.Mohamed Raju Mehandi Hasan Shah.
>
> as follows :-
>
> FIRSTLY, that you abovenamed accused No.1 on 1.6.2000 at about 1445 hours at BEST Bus stop Route No.310, Near Dharavi-Bandra Road and Bandra-Kurla Complex Road Junction, Bandra (E), Mumbai, were found in possession of 1.750 kgs. of Charas, a narcotic drug, belonging to the Group of Cannabis other than Ganja. to wit, you Accd.No.1 was found carrying dark blue coloured plastic carry-bag containing 42 black coloured balls of Charas weighing 1.750 kgs. wrapped in a transparent polybag, in contravention of the provisions of Sec.8(c) of the NDPS Act, 1985, and you Accd.No.1 thereby committed

an offence punishable under Sec.20(b) (ii) of the NDPS Act, 85, and within my cognizance.

SECONDLY, that you abovenamed accd.Nos.1 & 2 at the aforesaid place, date and time were found abetting each other or were party to a criminal conspiracy to commit an offence punishable under the NDPS Act 85 i.e. to acquire, possess, sell and transport 1.750 Kgs. of Charas in contravention of the provisions of Sec.8(c) of the NDPS Act, and thereby each of you committed an offence punishable under Sec.29 r/w Sec.20(b)(ii) of the NDPS Act, and within my cognizance.

AND I HEREBY DIRECT that you be tried by me on the aforesaid charges."

3. The Trial Court on analysing the evidence on record, proceeded to find Appellant/accused No.1 Mohd.Akram guilty of the offence punishable under Section 20(b)(ii) of the Act. The Appellant/accused No.1 was acquitted of charge under Section 29 r/w Section 20(b)(ii) of the Act. The accused No.2 Mohd.Raju was acquitted of all the charges. The Trial Court passed the order requiring the Appellant/accused No.1 to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,00,000/- (Rupees One Lakh) and in default of payment of fine, to suffer further rigorous imprisonment for a period of further three

months.

4. Having gone through the record with the assistance of the Counsel appearing for the parties and the rival submissions made across the bar, in my opinion, the Appeal would succeed by giving benefit of doubt to the Appellant; on accepting the argument that the prosecution has failed to establish the link between the fact that the sample which was forwarded to the Chemical Analyser was the very same samples which were deposited with the Officer-in-charge of the concerned Police Station. In other words, the prosecution has failed to establish that the samples which were drawn from the seized items and were given in custody of the Officer-in-charge of the Police Station on the previous day i.e. 1st June 2000, the very same samples were sent to the Chemical Analyser for testing.

5. Before I deal with this aspect, I shall advert to the other contentions raised before me on behalf of the Appellant, which will have to be negated. The first contention canvassed before me

is one of non-compliance of Section 42 of the Act. It was argued that no details have been furnished in the evidence before the Court given by the witnesses at the trial to substantiate the fact that compliance of Section 42 of the Act was done. It is submitted that the prosecution witnesses have merely stated that PI Choudhary received information, which information was reduced into writing. However, the witnesses have not proved the contents of the information so recorded by PI Choudhary. Sequentially, it was argued that if the contents of the information reduced into writing are not proved in evidence, the same (Exhibit 7) will be of no avail and it would necessarily follow that the arrest of the accused and seizure was not as a consequence of information so received. There is no substance in this submission. This is so because requirement of Section 42 of the Act is essentially one of obligating the Police Officer who receives information to immediately record the same in writing and to immediately inform the superiors about the same before proceeding to exercise powers under Section 42 of the Act. In the present case, the prosecution witness Murlidhar

G.Karpe (PW 1), who is the complainant as well as Ravindra D.Shelke (PW 4) who is the Investigating Officer have categorically stated in evidence that they were present in the Office along with PI Choudhary at the relevant time when the information was received by PI Choudhary. On receipt of such information, PI Choudhary immediately reduced the same in writing and sent intimation about the same to the superior officers. The extract (Exhibit 7) of the entry so made is produced by the witness in evidence and has been exhibited. There is no challenge to the said document as such. In that sense, there is evidence both ocular as well as documentary produced by the prosecution to substantiate that there was compliance of Section 42 of the Act both in recording of the information in writing immediately after it was received as well as of forwarding the same to the superior officers. I am in agreement with the argument canvassed by the Assistant Public Prosecutor that assuming that the contention of the Appellant that as the prosecution witnesses have not deposed about the contents of Exhibit 7 and have not proved the same, it would necessarily follow that the arrest

of the Appellant/accused and the seizure was not pursuant to the information so received but otherwise, even if accepted, will make no difference to the prosecution case. This is so because immediately after the arrest and seizure of the contraband items, formal complaint has had been recorded which fact has been deposed to by complainant (PW 1). The complaint has been brought on record by this witness and marked as Exhibit 10. The Investigating Officer (PW 4) has also spoken about this fact. There is absolutely no challenge to the documents Exhibit 7 or Exhibit 10 at the instance of the defence. Suffice it to observe that the argument of Appellant/accused No.1 that there is non-compliance of Section 42, is devoid of merits.

6. The next argument canvassed before this Court is that there is non-compliance of Section 50 of the Act. Insofar as compliance regarding Section 50 of the Act is concerned, for that, prosecution has examined complainant (PW 1) and Investigating Officer (PW 4), who were present on the spot at the relevant time, when PI Choudhary

apprised the accused of their rights to be searched in the presence of Gazetted Officer or Magistrate. The accused persons were told to exercise their option in this behalf. The accused gave their response to this offer. All these matters are proved by the prosecution in the form of evidence of PW 1 and PW 4 who were present on the spot and witnessed those events as unfolded. Their version is corroborated by the panchanama as also the evidence of panch witnesses. The Trial Court has analysed these materials and has come to a positive conclusion that formalities regarding Section 50 of the Act have been duly complied with. There can be no difficulty in accepting the opinion so recorded by the Trial Court which is substantiated from the evidence on record. To get over this position, Counsel for the Appellant would, however, contend that the prosecution has not examined PI Choudhary who had apprised the accused persons about their right under Section 50 of the Act that they were entitled to be searched before the Gazetted Officer or the Magistrate and that they were given opportunity to exercise that option. According to the Appellant, non-examination of PI Choudhary is

fatal to the prosecution case. On account of non-examination of PI Choudhary, the prosecution has not produced substantive evidence to support that relevant fact. Moreover, the evidence of PW 1 and PW 4 cannot assume the character of substantive evidence. To buttress this submission, reliance is placed on two decisions. Reliance is placed on the decision of the Division Bench of this Court in the case of **Mohanlal Khetaram Jangid vs. State of Maharashtra reported in 1998 I LJ 405**, particularly Para 7 and Para 9 of the said Judgment. Reliance is then placed on the decision of the Constitution Bench of the Supreme Court in the case of **The State of Panjab v. Baldev Singh reported in JT 1999 (4) SC 595**, particularly on contents of Para 18 of this Judgment. In the first place, both these decisions will not answer the core question raised on behalf of the Appellant as to whether it was mandatory to examine PI Choudhary to establish the fact regarding compliance of Section 50 of the Act. In the case of **Mohanlal Khetaram Jangid (supra)**, the Sub-Inspector who had apprised the accused about his rights under Section 50 of the Act was examined. In his deposition, he did not mention

about the option available to the accused that he can be searched before the Magistrate. In Para 7 of this decision, the Court has observed that the substantive piece of evidence was the deposition of the Police Sub-Inspector before the Court. Relying on this observation, the argument has been canvassed by the Appellant that non-examination of PI Choudhary would mean that substantive piece of evidence has not been brought on record and no other evidence would be of any use to the prosecution to establish compliance of Section 50 of the Act. In my opinion, this decision is not an authority on the proposition that is canvassed before me. It is not possible to take the view that the evidence of complainant (PW 1) and Investigating Officer (PW 4) is not a substantive piece of evidence as such. The substantive piece of evidence would be one in terms of Section 60 of the Indian Evidence Act, 1872. Section 59 of the Evidence Act postulates that all facts, except the contents of documents, may be proved by oral evidence. Section 60 envisages that oral evidence must, in all cases whatever, be direct. It then spells out as to what is direct evidence. It is

provided that if the evidence refers to a fact which could be seen, then it must be the evidence of a witness who says he has seen it. Whereas, if the oral evidence refers to a fact which could be heard, then it must be the evidence of a witness who claims that he had heard it. It is then provided that if the oral evidence refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says that he perceived it in that sense

or in that manner. Section 60 also refers to evidence if it refers to an opinion or to the grounds on which that opinion is held, it ought to be direct evidence of the person who holds that opinion on those grounds. On plain language of Section 60 of the Evidence Act, it is unfathomable that the evidence of PW 1 and PW 4 cannot be said to be a substantive piece of evidence. This is so because the fact that PW 1 and PW 4 were personally present along with PI Choudhary on the spot and had witnessed the events that had unfolded which events would speak about compliance of Section 50 of the Act. These witnesses were therefore, competent to

depose about the said facts, having seen and heard the same themselves, by way of oral evidence. The fact that PI Choudhary who had apprised the accused of their available right under Section 50 of the Act has not been examined by the prosecution, cannot be the basis to hold that substantive piece of evidence has not been produced by the prosecution. The evidence of PW 1 and PW 4 is corroborated by the panchanama as well as the evidence of panch witnesses. If the said evidence is considered in its totality, there can be no manner of doubt that the conclusion reached by the Trial Court about compliance of Section 50 of the Act is correct and warrants no interference.

7. In the case of **The State of Panjab v. Baldev Singh (supra)**, the principles regarding compliance to be made under Section 50 of the Act have been expounded. It is also held that the requirements of Section 50 of the Act are mandatory. Insofar as Para 18 of this Judgment on which emphasis was placed by the Appellant, it refers to the extract from the Judgment of a three-Judge Bench of the Apex Court in **Saiyad Mohd.**

Saiyad Umar Saiyad & Ors. v. State of Gujarat reported in JT 1995 (3) SC 489. Para 8 of that decision is extracted therein. In the said decision, the Apex Court has observed that if Officer concerned has not deposed that he had followed the procedure mandated by Section 50, that he had in fact done so, the Court is duty bound to conclude that the accused had not had the benefit of the protection that Section 50 affords; that, therefore, his possession of articles which are illicit under the Act is not established; that the precondition for his having satisfactorily accounted for such possession has not been met; and to acquit the accused. In the present case, on accepting the evidence of PW 1 and PW 4 as substantive piece of evidence regarding compliance of Section 50 of the Act, which evidence is corroborated by the contents of the panchanama as well as the evidence of the panch witnesses, no fault can be found with the conclusion reached by the Trial Court on he issue under consideration. The Assistant Public Prosecutor has rightly invited my attention to Para 33 of the decision in **Baldev Singh (supra)**, wherein, it is observed as follows :

> "The question whether or not the safe-guards provided in Section 50 were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of Section 50, and particularly, the safeguards provided in that section were complied with, it would not be advisable to cut short a criminal trial."

Accordingly, the argument regarding non-compliance of mandate of Section 50 of the Act does not commend to me.

8. That takes me to the next submission. It was argued by the Appellant that the prosecution has failed to establish the fact that the articles seized from the Appellant (bulk quantity) were stored in the Store Room in proper custody of specified Officer. According to the Appellant, the prosecution having failed to produce the Stock Register maintained in respect of the Store Room, it would necessarily follow that the prosecution has failed to establish the relevant fact. The

argument seems to be attractive, however, in the fact situation of the present case, the same will have to be rejected. In the present case, Investigating Officer (PW 4) has clearly stated that PI Choudhary consigned the articles to store under letter addressed to Sr. PI (Police Inspector of the Police Station). The said letter has been marked as Exhibit 12. This fact has not been challenged by the defence at all. In the cross-examination in Para 24, this witness has deposed that Store Room was in Azad Maidan Police Station. The only suggestion given to this witness is with regard to the date below the memo Exhibit 12 to be 2nd June 2000. That has been denied.

9. From the evidence of prosecution witnesses and Exhibit 12, it is seen that the samples as well as the bulk articles were given in custody of the specified officer by PI Choudhary on the same day i.e. 1st June 2000. There is acknowledgement of receipt of the articles of the same date. As mentioned earlier, the defence has not challenged the evidence produced by the prosecution. Merely non-production of Stock Register, therefore, cannot

be the basis to hold that the trial has vitiated. There is evidence on record to establish the fact that the articles seized from the Appellant/accused were given in the safe custody of the concerned Officer after complying with necessary formalities on the same date i.e. 1st June 2000. Viewed thus, this submission does not commend to me.

10. It was next contended that the prosecution has not established the fact beyond reasonable doubt that the samples which were deposited in the Store Room were the same samples withdrawn and forwarded to the Chemical Analyser for testing. In effect, it is contended that the prosecution has not been able to establish the link that the samples taken out from the bulk articles on 1st June 2000 were the same samples properly preserved and then sent to the Chemical Analyser for testing. According to the Appellant, the prosecution has not adduced any legal evidence that the samples stored in the Store Room were withdrawn and the same were forwarded to the Chemical Analyser as such. It is further submitted that the fact that the samples taken out from the bulk quantity were properly

sealed and were given in custody of the Police Officer in-charge of the Police Station, to be kept in Store, were received intact and in sealed condition, and that, the same were properly preserved till the same were handed over to the Investigating Officer for being delivered to the Chemical Analyser for analysis. This fact could have been established only if the concerned Officer-in-charge of the Police Station was to put his specimen on the samples after the same were received in his custody in sealed condition and while forwarding the same samples to the Chemical Analyser, and would have furnished sample of the seal used by him which ought to correspond with the seal put by him on the seal packet. This evidence has not been produced, though obligatory in terms of Section 55 of the Act.

11. Besides, it is submitted that from the memorandum of seizure, the description of the bulk quantity seized from the Appellant/accused is mentioned as black, whereas, the items received by the Chemical Analyser for testing is mentioned as brownish mass by the Chemical Analyser. Even this

discrepancy was material, contends learned Counsel. On this basis, it is submitted that the Chemical Analyser's report though produced on record by the prosecution will be of no avail. It therefore, follows that the prosecution has failed to establish the fact that the seized articles were contraband articles. To buttress the above submission, reliance is placed on the decision of the Apex Court in the case of **State of Rajasthan v. Gurmail Singh reported in (2005) 3 SCC 59**. Reliance is placed on observation in Para 3 of the Judgment which reads thus :

> "3. We have perused the judgment of the High Court. Apart from other reasons recorded by the High Court, we find that the link evidence adduced by the prosecution was not at all satisfactory. In the first instance, though the seized articles are said to have been kept in the malkhana on 20-5-1995, the malkhana register was not produced to prove that it was so kept in the malkhana till it was taken over by PW 6 on 5-6-1995. We further find that no sample of the seal was sent along with the sample to the Excise Laboratory, Jodhpur for the purpose of comparing with the seal appearing on the sample bottles. Therefore, there is no evidence to prove satisfactorily that the seals found were in fact the same seals as were put on the sample bottles immediately after seizure of the contraband. These loopholes in the prosecution case have led the High Court

to acquit the respondent."

12. Reliance is then placed on another decision of the Supreme Court in the case of **State of Gujarat v. Ismail U Haji Patel & Anr. reported in (2003) 12 SCC 291**. Reliance is placed on Paragraphs 5 and 6 of this Judgment which read thus:

> "5. We find that there was really no material brought on record to show as to where the seized articles were kept. The High Court after analysing the evidence on record came to hold that the identity of the articles sent for analysis was not established and it was not established that the articles seized were in fact sent for chemical examination. In view of the judgment of this Court in *Valsala v. State of Kerala* the view of the High Court is in order. It is not the delay in sending the samples which is material. What has to be established is that the seized articles were in proper custody, in proper form and the samples sent to the Chemical Analyst related to the seized articles.
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> 6. Further, there was nothing brought on record to show as to under whose directions the samples were sent for chemical examination.The High Court relied on Section 55 of the Act to hold that the absence of such information also vitiates the proceedings. Section 55 of the Act provides that the officer in charge of the police station has to take charge of an keep in safe custody the seized articles pending orders of the Magistrate. Since there is no material to show that there

> was any order of the Magistrate as to where the seized articles were to be kept, and there was no material to show that there was safe custody as is required under Section 55 of the Act, the view of the High Court is in order. Judgement of the High Court does not warrant any interference in our hands and the appeal is dismissed."

13. Having considered the rival submissions on this aspect, I am inclined to accept the grievance of the Appellant that the prosecution has failed to establish the link regarding the fact that the Investigating Officer had withdrawn the sample from the Store Room out of the sample deposited on 1st June 2000 in connection with the present case as such. Besides, the prosecution has failed to establish the fact that the Officer-in-charge of the concerned Police Station in whose custody the samples were kept in the Store, had put his seal and that while forwarding the samples to the Chemical Analyser, sample seal of the Officer-in-charge of the Police Station was also provided to the Chemical Analyser for comparison. Even these facts have not been established. The requirement of Officer-in-charge placing his seal on the sample arises out of Section 55 of the Act.

The sanctity of requiring the Officer-in-charge to put his seal in terms of Section 55 is to reassure that the sample received by him for preservation in store was intact and in sealed condition. Besides, while forwarding that sample, it was necessary for the Officer to send the sample of the seal put by him on the sample to be forwarded to the Chemical Analyser for comparison. The Apex Court in the case of **State of Rajasthan v. Gurmail Singh (supra)** upheld the view taken by the Rajasthan High Court that non forwarding of such sample of the seal would lead to inference that the prosecution has not satisfactorily proved that the seals found were in fact the same seals as were put on the sample bottles. In the case of **State of Gujarat v. Ismail U.Haji Patel (supra)**, the Apex Court, while dealing with the case, observed that no material was brought on record to show as to where the seized articles were kept in that case. The finding of the High Court that the identity of the articles sent for analysis was not established and it was not established that the articles seized were in fact sent for Chemical Analyser was upheld, keeping in mind the exposition in the case of

Valsala vs. State of Kerala reported in 1993 Supp (3) SCC 665. In Paragraph 5 of the reported decision, the Apex Court has observed that what has to be established by the prosecution is that the seized articles were in proper custody, in proper form and the samples sent to the Chemical Analyst related to the seized articles. In Paragraph 6 of the same decision, the Apex Court has referred to the requirements of Section 55 of the Act, which obligates the Officer-in-charge of the Police Station to take charge of and keep in safe custody the seized articles pending orders of the Magistrate. In the present case, to establish the fact that the Investigating Officer took the sample from the store room, reliance was placed by the Assistant Public Prosecutor on the evidence of PW 4. However, even on fair reading of the said evidence, to my mind, there is no assertion made by PW 4 that he withdrew the very same samples from the store which relate to the present case and handed the same to Prakash Maruti Rane (PW 2) with instructions to deliver it to the Chemical Analyser. All that this witness has deposed is that on 2nd June 2000, he took over the envelope

containing sample marked A.1 and handed it over to Prakash Maruti Rane (PW 2) with instructions to deliver the same to the FSL. That the envelope was in sealed condition when it was handed over to Prakash Maruti Rane (PW 2). There is absolutely no reference to the fact that he withdrew the same sample from the Store Room which was in the safe custody of the Officer-in-charge of the Police Station. It has come in his evidence that the Store Room was at Azad Maidan Police Station. No contemporaneous record has been placed on record to suggest the fact that the same articles which were stored in the Store Room were withdrawn by him on 2nd June 2000. Indeed, the Court below has referred to Exhibit 8 to hold that the prosecution has established that the samples were withdrawn and sent for chemical analysis. However, Exhibit 8 does not pertain to the samples but refers to the request made by PI Choudhary for handing over the seal (before the raid) which was required with regard to the seizure procedure to be observed in the present case. As mentioned earlier, the prosecution witnesses have not deposed to the fact that the samples sent to the Chemical Analyser for

testing was the same sample deposited in the Store on 1st June 2000 as such. In other words, there is no legal evidence to establish the fact that the sample which was deposited in the Store on 1st June 2000 in connection with the present case was withdrawn to be forwarded to the Chemical Analyser as such. This link is missing. The Assistant Public Prosecutor is unable to rely on any other evidence to rebut this position.

. There is also substance in the grievance made on behalf of the Appellant that the concerned Officer-in-charge of the Police Station in whose custody the seized articles were stored has failed to put his seal on the samples so taken. Besides, no legal evidence has been produced by the prosecution that such seal was put by the Officer-in-charge of the Police Station as required by Section 55 of the Act. There is also no legal evidence produced that the specimen of the seal of the concerned Officer-in-charge of the Police Station was also forwarded to the Chemical Analyser. In such situation, it will be highly unsafe to assume that the sample kept with the

Officer-in-charge was received by him in sealed and intact condition and that he had preserved it in that form till it was handed over to be delivered to the Chemical Analyser and that the Chemical Analyser had reassured himself on the basis of the specimen of the seal of the concerned officer which ought to appear on the sample. The dictum of the Apex Court in the case of **State of Gujarat v. Ismail U.Haji Patel (supra)** would squarely apply to the case on hand. The Assistant Public Prosecutor, however, would submit that although the prosecution witnesses have not specifically spoken about the seal put by the Officer-in-charge of the Police Station in whose custody the seized articles were stored, however, the prosecution has produced Exhibit 17 which is the forwarding letter sent to the Chemical Analyser along with the samples on which copy of the label an impression of seal has been placed. Indeed, on the overleaf of this letter, some seal has been placed in the column specified for copy of the label and impression of seal. However, no witness has said that similar seal was appearing on the sealed envelopes containing samples and that this seal was put by

the Officer-in-charge of the Police Station in whose custody the samples were stored. On this reasoning, the Appellant would be entitled for benefit of doubt, as the prosecution has failed to establish the link that the samples sent to the Chemical Analyser was the same sample which was stored on 1st June 2000 in relation to the present case and was withdrawn from the store and forwarded to the Chemical Analyser. Thus understood, the Chemical Analyser's report will be of no avail to the prosecution.

14. The Assistant Public Prosecutor would, however, contend that even if the Chemical Analyser's report was to be discarded; there was evidence on record to suggest that after the accused was accosted and search was taken, bulk quantity was recovered from the Appellant/accused and the same was immediately tested with the kit carried out by the raiding party to the spot. The test was carried out on the spot and reported positive for charas. This fact is deposed not only by PW 1, PW 4 but also by the panch witnesses and noted in the panchanama. However, what is

overlooked is that neither complainant (PW 1) nor Investigating Officer (PW 4) or any other witness has deposed that any of them was qualified and trained to carry out such tests or what was the procedure or method adopted by them to carry out the test. They have not deposed as to what test was carried out and the reasons to arrive at the opinion that the test was positive for charas. The Assistant Public Prosecutor however contends that only recently I had occasion to deal with similar contention in the case of **Pradeep Ramniklal Bhat v. State of Maharashtra being Criminal Appeal No.337 of 2000 decided on September 12, 2006**. The Assistant Public Prosecutor is not right. In that, I did not proceed to answer the contention on the sole basis of test conducted by the Police Officer and the opinion formed by him about the contraband item, or have held that the same, by itself, would be sufficient to proceed. In that case, in the first place, I proceeded to affirm the finding of the Trial Court that the Chemical Analyser’s report will have to be accepted as it is and the same indicated the fact that the article seized was contraband. In the present case, it is not

possible to rely on the Chemical Analyser's report for the reasons already noted earlier. The fact that PW 1 and PW 4 have deposed that they had carried the kit for the purposes of testing at the time of raid and test was carried out on the spot which tested positive for charas, by itself, cannot be the basis to proceed against the Appellant. The Appellant is entitled for benefit of doubt. Mere final opinion of the Investigating Officer would not be sufficient. The parameters which apply for accepting the Chemical Analyser's report will have to be fulfilled in the evidence of the prosecution witnesses. The prosecution witness was obliged to clearly mention the grounds or basis for reaching the opinion that the article analysed by him was a contraband item. The prosecution witness was obliged to state the details of the test experiments or the methods employed by him for reaching the said conclusion and the data for forming such opinion that the substance was contraband and prohibited under the Act. The bald opinion of the Officer who has conducted spot test bereft of reasons and grounds, will not be of any help to the Court and it will be unsafe to record

conviction on the basis of such opinion alone. In the case of **Pradeep Ramniklal Bhat v. State of Maharashtra (supra)**, there were additional features taken into account amongst other, the Chemical Analyser's report as also the recovery of huge quantity contraband item weighing 99 kgs at the instance of the accused under Section 27 of the Evidence Act and other evidence.

15. Understood thus, the Appellant is entitled for benefit of doubt. Accordingly, this Appeal succeeds. The Impugned Judgment and Order is set-aside. Instead, the Appellant Mohd.Akram Mohd.Majij Shaikh is acquitted of the charge, for which he is found guilty by the Trial Court under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is ordered that the Appellant Mohd.Akram Mohd.Majij Shaikh be set at liberty forthwith unless required in any other offence.

16. Muddemal be disposed of in accordance with law.

A.M.KHANWILKAR, J.